

United States
Circuit Court of Appeals

For the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

KITTY JACKSON, HILDA J. FOSTER and HILDA J.
FOSTER, as Administratrix of the Estate of JACK
JACKSON, Sometimes Called TRINIDAD JACK,
Deceased,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Northern District of California,
Northern Division.

FILED

JAN 15 1929

PAUL P. O'BRIEN,
CLERK

NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

Attorneys for Appellant:

GEO. J. HATFIELD, Esq., U. S. Attorney,
San Francisco, Cal.,

ALBERT E. SHEETS, Esq., Asst. U. S. At-
torney, Sacramento, Calif.

Attorney for Appellee:

W. ERNEST DICKSON, Esq.,
Eureka, Calif.

In the Northern Division of the United States
District Court, for the Northern District of
California.

UNITED STATES OF AMERICA.

Plaintiff.

vs.

KITTY JACKSON, HILDA J. FOSTER, and
HILDA J. FOSTER, as the Administratrix
of the Estate of JACK JACKSON (Some-
times Called TRINIDAD JACK). De-
ceased.

Defendants.

JUDGMENT BY THE COURT.

This cause came on regularly for trial and was
tried at a term of this court, before the Hon.
Frank H. Kerrigan, sitting as a Court of Equity

without a jury, at Eureka, California, on the 16th day of July, 1928; George J. Hatfield, U. S. Attorney for the Northern District of California, Northern District, appearing for plaintiff and W. Ernest Dickson, of Eureka, appearing for defendants.

Upon motion of attorney for plaintiff, it was ordered that Hilda J. Foster, as administratrix of the estate of Jack Jackson (sometimes called Trinidad Jack), deceased, be made a party defendant in addition to Hilda J. Foster and Kitty Jackson.

Whereupon evidence both documentary and oral was introduced by both plaintiff and defendants, and the evidence being closed, the cause was submitted to the Court for its decision.

And the Court being fully advised in the premises, after due deliberation files its findings and decision in writing and orders that judgment be entered herein in favor of defendants in accordance therewith:

WHEREFORE by reason of the law and findings as aforesaid IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Kitty Jackson, Hilda J. Foster, and the Estate of Jack Jackson (sometimes called Trinidad Jack), deceased, are the owners in fee and [1*] entitled to the possession of the land and premises in plaintiff's complaint and hereinafter described, and that neither the United States of America nor Bob

*Page-number appearing at the foot of page of original certified Transcript of Record.

Roberts, an Indian ward of the United States of America, has any estate, right, title or interest therein.

The land and premises herein referred to are situated in the county of Humboldt, State of California, and are more particularly described as follows:

South half of Southwest quarter of Section twenty (20) and the Northeast quarter of the Northwest quarter of Section 29 in Township 11 North, Range 3 East, Humboldt Meridian, containing 120 acres according to the United States Survey.

Done in open court this 6th day of Sept., 1928.

FRANK H. KERRIGAN,

Judge of U. S. District Court, Northern District of California, Northern Division.

[Endorsed]: Filed and entered Sep. 6, 1928. [2]

[Title of Court and Cause.]

AGREED STATEMENT.

(Under Equity Rule 77.)

The questions arose and were decided in the District Court as appears in the opinion of the District Judge reported, 27 F. (2d) 751, which opinion is here incorporated as though copied fully herein and is adopted as an agreed statement under Equity Rule 77; and it is agreed that the said opinion sets forth so much of the facts

alleged and proved as is essential to a decision by the Appellate Court of the questions that arose and were decided in the District Court. It is stipulated that the said opinion may be read in said report, 27 F. (2d) 751, with the same effect as though copied and certified in the transcript of record.

GEO. J. HATFIELD,
United States Attorney,
ALBERT E. SHEETS,
Asst. United States Attorney,
Attorneys for Plaintiff and Appellant.
W. ERNEST DICKSON,
Atty. for Respondent.

Approved.

FRANK H. KERRIGAN,
Judge.

[Endorsed]: Filed Dec. 4, 1928. [3]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL,
ASSIGNMENT OF ERRORS, PRAYER
FOR REVERSAL, AND ORDER ALLOW-
ING APPEAL.

PETITION.

Considering itself aggrieved by the final decision and decree of the United States District Court for the Northern Division of the Northern Dis-

trict of California in the above-entitled cause, the plaintiff therein, United States of America, hereby prays that an appeal may be allowed in its behalf to the Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors made in said cause to the prejudice of this plaintiff, as more fully appears from the following:

ASSIGNMENT OF ERRORS.

The said plaintiff assigns the following errors in the record and proceedings in the said case:

1. The said District Court erred in ruling that Jack Williams was not an "allottee" within the meaning of that term as used in the Act of June 21, 1906 (34 Stat., pp. 325, 326. U. S. C., tit. 25, § 391).

2. The said District Court erred in concluding and deciding, upon the basis of said ruling, that said plaintiff was not [4] entitled to any relief in said cause.

3. The said District Court erred in concluding and deciding, upon the basis of said ruling, that the title claimed by the defendants and cross-complainants in said cause should be adjudged good and quieted against said plaintiff.

4. The said District Court erred in concluding and deciding, upon the basis of said ruling, that the title claimed by said plaintiff in said cause should not be quieted against said defendants and cross-complainants.

PRAYER FOR REVERSAL.

For which errors the said plaintiff, United States of America, prays that the said final decision and decree of the said District Court entered on the 3d day of September, 1928, in said cause be reversed and a judgment rendered in favor of said plaintiff and for costs.

GEO. J. HATFIELD.

GEO. J. HATFIELD,

United States Attorney,

ALBERT E. SHEETS.

ALBERT E. SHEETS,

Asst. United States Attorney,

Attorneys for Said Plaintiff and Appellant.

ORDER ALLOWING APPEAL.

IT IS ORDERED that the appeal petitioned for in the foregoing petition be and the same is hereby allowed and it is ordered further that the plaintiff and appellant therein shall not be required to give any security upon said appeal.

Dated: November 28th, 1928.

FRANK H. KERRIGAN,

United States District Judge.

[Endorsed]: Filed Nov. 28, 1928. [5]

[Title of Court and Cause.]

AFFIDAVIT OF MAILING PRAECIPE FOR
TRANSCRIPT OF RECORD.

United States of America,
Northern District of California,
County of Sacramento,—ss.

Zula G. Davenport, being duly sworn, says that she is over the age of eighteen, and is not a party to the above-entitled action.

That on the 4th day of December, 1928, she, the said affiant, deposited in the United States post-office at the city of Sacramento, county of Sacramento, State of California, a copy of the praecipe to the Clerk of the above-entitled court to issue a transcript of the record in this cause to be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, etc., enclosed in a sealed, franked envelope, directed to

W. Ernest Dickson, Esq.,
Attorney at Law,
First National Bank Bldg.,
Eureka, California,

the attorney for the said defendants; and that there is a regular communication by the United States mails from said postoffice of deposit thereof, as aforesaid, to the place of residence of said defendants' attorney.

[Seal]

ZULA G. DAVENPORT.

Subscribed and sworn to before me this 4th day of December, 1928.

[Seal] F. M. LAMPERT,
Deputy Clerk, U. S. District Court, Northern District of California. [6]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue a transcript of the record in this cause to be filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, in connection with the appeal heretofore taken and perfected to said court, and include in said transcript the following papers:

1. The final decree, with date of entry endorsed thereon.
2. Agreed statement.
3.
4.
5.
6. Petition for allowance of appeal, assignment of errors, prayer for reversal, and order allowing appeal.
7. Citation on appeal with proof of service.
8. This praecipe.

GEO. J. HATFIELD,
ALBERT E. SHEETS,
Attorneys for Plaintiff and Appellant.

[Endorsed]: Filed Dec. 4, 1928. [7]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing ——— pages, numbered from 1 to ———, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of United States vs. Kitty Jackson, et al., Eq. No. 245, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

Annexed hereto is the original citation on appeal.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court this 14th day of December, A. D. 1928.

[Seal]

WALTER B. MALING,

Clerk.

By F. M. Lampert,

Deputy Clerk. [8]

[Title of Court and Cause.]

AFFIDAVIT OF MAILING CITATION ON
APPEAL.

United States of America,
Northern District of California,
County of Sacramento,—ss.

Zula G. Davenport, being duly sworn, says that she is over the age of eighteen, and is not a party to the above-entitled action.

That on the 4th day of December, 1928, she, the said affiant, deposited in the United States post-office at the city of Sacramento, county of Sacramento, State of California, a copy of the citation on appeal in the above-entitled action, enclosed in a sealed, franked envelope, directed to

W. Ernest Dickson, Esq.,
Attorney at Law,
First National Bank Bldg.,
Eureka, California,

the attorney for the said defendants; and that there is a regular communication by the United States mails from said postoffice of deposit thereof, as aforesaid, to the place of residence of said defendants' attorney.

ZULA G. DAVENPORT.

Subscribed and sworn to before me this 4th day of December, 1928.

[Seal] F. M. LAMPERT,
Deputy Clerk, U. S. District Court, Northern District of California. [9]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States, to Kitty Jackson, Hilda J. Foster, Hilda J. Foster as Administratrix of the Estate of Jack Jackson, Sometimes Called Trinidad Jack, Deceased,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern Division, Northern District of California, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Northern Division of the Northern District of California, this 3d day of December, A. D. 1928.

FRANK H. KERRIGAN,
United States District Judge.

Citation on Appeal. Filed Dec. 4, 1928. [10]

[Endorsed]: No. 5659. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Kitty Jackson, Hilda J. Foster, and Hilda J. Foster, as Administratrix of the Estate of Jack Jackson, Sometimes Called Trinidad Jack, Deceased, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Northern Division.

Filed December 17, 1928.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.